

### REMARKS

Claims 1-33 are pending. Claims 2-10, 12-14, 16-27 and 29-33 have been amended strictly as to informalities without in any way narrowing the claims. The title has been amended to make it more descriptive, as required in the Office Action. The specification has been amended as to a matter of form. Claims 1, 7, 11, 15 and 28 are the only independent claims.

Initially, the Office Action was accompanied by a returned copy of the form PTO-1449 filed with the original application papers. That form listed a Japanese Laid open patent application, accompanied by an English abstract, as well as four Japanese language documents, the relevance of each of which is discussed in detail in the Background of the Invention section of the specification. In the case of the Japanese published application, instead of initialing the references, the Examiner struck through the reference, as if it were non-compliant, and included a statement that only the abstract was considered.

According to the MPEP, a complying citation of a non-English document should be indicated as being considered *in the same manner as if it were in English*. No statement should accompany the indication referring to what was and what was not considered. See MPEP Section 609 III C(2). For at least this reason, this reference should have been initialed as having been considered, without further comment on the Form.

As to the four articles listed at the bottom of the PTO-1449, each reference was accompanied by an indication that it was discussed in the specification, even the last article for which no abstract was provided. It is believed clear from the *lengthy* and detailed discussion of each of these documents in the Background of the Invention section of the specification what the relevance of each of these documents is. For at least this reason, these non-English documents are clearly in compliance and should have been considered, and initialed without further comment. The Examiner is requested to explain how the relevance of these four

documents is not clear from the extensive discussion and prior art figures provided in the Background section of the specification.

For the foregoing reasons, Applicant requests that all the cited references be considered and the attached copy of the PTO-1449 be initialed and returned in the next Office Action.

The specification was objected to because of an unclear copy having been initially filed. Applicant submits herewith a clean original hard copy of the specification as originally filed. This clean copy is a duplicate of what was originally filed and contains no new matter.

Additionally, the references to the Japanese documents discussed in the Background section was objected to. In fact, this detailed English explanation of the Japanese prior art is perfectly acceptable and in fact discusses the relevance of those documents, which were also cited in the Information Disclosure Statement discussed above. For at least this reason, there is no basis for such an objection. If the Examiner maintains this objection, she is requested to cite a statute or regulation to support such an objection.

The claims were objected to due to certain informalities. The amendments to the claims address those informalities without narrowing the claims.

Claims 1-33 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The claims have been amended, without narrowing the claims, to address the concerns set forth in the Office Action. Except that in the case of claim 6, the differences discussed in that claim do not include the problem noted for claims 12 and 16. For that reason, claim 6 has not been amended in this regard.

As to the statement that the claims are “generally narrative and indefinite,” this type of conclusory statement is not a sufficient basis upon which to base an indefiniteness rejection.

The test for indefiniteness is whether one of skill in the art, after having read the specification, could determine whether or not a given device or method falls within the scope of the claim in question. There is no other test. It is submitted that the claims meet this test.

It is believed that the rejections under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

The drawings were objected to as being of poor line quality. A clean duplicate set of the originally filed drawings is submitted herewith. No new matter is being introduced. As to the reference numerals 34 and 36, which the Office Action stated were not mentioned in the description, reference numeral 34 is in fact mentioned at page 26, line 18. As to reference numeral 36, the specification is being amended to reference this numeral. This is believed to overcome the objection.

Claims 1-33 were rejected under 35 U.S.C. § 103 as obvious from U.S. Patent 6,622,301 (Hirooka et al.) in view of U.S. Patent 6,588,009 (Guffens et al.).

It is not proper to reject claims on the basis of the *gist* of the invention. The prior art must teach or suggest each and every feature of the claims. In this case, the Office Action referred to allegedly corresponding features in the prior art that did not actually teach what was claimed. For at least this reason the rejections do not set forth a prima facie case of obviousness.

For example, with regard to claim 1, the Office Action conceded that Hirooka did not teach the recited control speculative mode but that Guffens allegedly supplied these features. However, even the Office Action's summary of the relevance of the cited portions of Guffens does not show how Guffens supplies the details recited in claim 1, and Applicant also fails to find the recited features in Guffens. If the Examiner wishes to maintain this rejection, she is requested to point out in detail how the combination of Guffens and Hirooka shows

each and every feature of claim 1, in the same detail recited in that claim. For at least the above reason, no prima facie case of obviousness has been set forth against claim 1.

Independent claim 15 is rejected based upon the same reasoning as that used to reject claim 1, although different features are recited in claim 15. This portion of the Office Action does not set forth how the cited references teach or suggest all of the recited register allocating step, fork spot determination step, instruction reordering step or register allocation step and for at least this reason fail to set forth a prima facie case of obviousness with regard to claim 15, which is believed patentable. Claim 28 recites similar features in a recording medium claim and is believed patentable for similar reasons.

The rejection of independent claim 7 is similarly deficient. For example, the Office Action pointed to column 6, lines 23-24 of Hirooka as allegedly teaching the recited fork spot determination section for determining, based upon a result of the trial of the register allocation, a spot of a conditional branch portion of the intermediate program to be converted into parallel code for which a thread creation instruction is used. However, the cited portion of Hirooka, contains no teaching or suggestion of all of the features recited with regard to this feature.

Hirooka's paralleling section 22 includes a kernel loop detector section 4 which detects a kernel loop having the longest sequential execution time from paralleling objective loops to distribute a range of repetition of loops in source program 1. Section 22 detects all loops for execution of the paralleling in which a loop repetition range of program 11 inputted in processing step 41 is distributed. Among the loops, section 22 detects a kernel loop having the longest sequential execution time. See column 6, lines 55 et seq. However, no teaching has been found that section 22 determines, based upon a result of the trial of the register allocation, a spot of a conditional branch portion of the intermediate program to be converted into parallel code for which a thread creation instruction is used, as is recited. For at least this

reason, no prima facie case of obviousness has been established and claim 7 is believed patentable.

With regard to claim 11, the Office Action similarly appears to be examining the gist of the claim, without giving each and every feature patentable weight. For example, the Office Action cites Hirooka's column 2, lines 49-50 and 65, and column 5, line 50 as allegedly teaching the recited means for calculating a distance of data dependence generated through a memory in the target processor apparatus for the intermediate program. However, the cited portions of Hirooka simply mention that data is optimally distributed to improve data locality in a kernel loop (column 2), and that an intermediate language is generated (column 5). Even when these portions are taken together, there is no teaching of the recited means for calculating a distance of data dependence generated through a memory in the target processor apparatus for the intermediate program. For at least this reason, no prima facie case has been established.

The above deficiencies are only exemplary and show that the recited features were not given patentable weight during examination. For at least the foregoing reasons, the independent claims are believed clearly allowable over the prior art.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

By 

Joseph W. Ragusa

Registration No.: 38,586

DICKSTEIN SHAPIRO MORIN &  
OSHINSKY LLP

1177 Avenue of the Americas

41st Floor

New York, New York 10036-2714

(212) 835-1400

Attorney for Applicant